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SUBJECT: WIPO Committee on Development and Intellectual Property
Meeting, November 16-20, 2009

11. SUMMARY: The 4th session of the WIPO Committee on Development and Intellectual Property (CDIP) was a constructive step forward from the U.S. perspective. The Committee approved five major thematic projects and reviewed all projects and activities under current implementation. On the important issue of how CDIP should coordinate with other WIPO bodies, the U.S. delegation worked closely with its Group B partners to forge a common position and to narrow differences with the group of "like-minded countries". END SUMMARY

12. The Fourth Session of the CDIP was held from November 16 to November 20, 2009. 89 Member States and 36 Observers participated in the meeting. U.S. delegation members were Neil Graham, Attorney Advisor, Office of Intellectual Property Policy and Enforcement, US Patent and Trademark Office (USPTO) (head of delegation); Michele Woods, Senior Counsel, Office of Policy and International Affairs, U.S. Copyright Office; Marina Lamm, Attorney Advisor, Office of Intellectual Property Policy and Enforcement, USPTO; Paula Pinha, Attorney Advisor, Office of Policy and International Affairs, U.S. Copyright Office; and Otto Hans Van Maerssen, Counselor for Economic and Science Affairs, U.S. Department of State, U.S. Mission, Geneva.

Issue of "Coordination Mechanism" Takes Center Stage

13. Two contrasting proposals on the issue of the coordination mechanism were discussed at CDIP 4, one from Group B (developed country) members, including the United States, and one from Brazil, Algeria, Pakistan, and India: central players in what is sometimes called the group of "like-minded" countries, or Group A. The fundamental distinction between the two proposals is that Group B believes that CDIP should have a status equal to but not greater than all other WIPO committees, whereas Group A maintains that CDIP should be placed in an oversight role that would effectively place it above all other WIPO committees with respect to the implementation of WIPO development initiatives. Specifically, the Group B proposal stressed the need to ensure that development remain an integral part of WIPO's work, but emphasized the importance of keeping all WIPO committees on an equal footing and accountable to the General Assembly, as well as the need to avoid any new financial obligations for member states. In discussions, Group B also emphasized the importance of using available meeting time more efficiently before considering additional special sessions to enable CDIP to fulfill its evaluative role.

14. By contrast, the proposal by the "like-minded" countries would have required: permanent special sessions of the committee to review and assess mandatory reports by other committees on their implementation of the Development Agenda; the use of the Audit Committee as an independent evaluation body to assess the overall progress of the Development Agenda throughout WIPO; and a council of "wise men / women" -- experts in IP and development -- to conduct biennial reviews of WIPO and its progress in "mainstreaming" the Development Agenda into the organization's activities.

15. Informal negotiations over these competing proposals took place

Thursday morning and continued in the evening, with frank and productive discussions between the two sides. Based on these discussions, the parties modified their original proposals, and informal negotiations on Friday resulted in an early effort to create a single document setting out alternative proposals on the various issues that could eventually evolve into a compromise text. At the end of the meeting on Friday, it was apparent that while progress had been made to narrow differences, insufficient time remained to discuss all of the outstanding issues. The like-minded countries pushed for intersessional meetings on this agenda item, but Group B members objected, citing the difficulty and expense of bringing home country experts to Geneva. As a compromise, it was agreed that discussions on the issue would continue at CDIP 5 next April as the first item on the agenda, but that delegations should feel free to conduct bilateral discussions in the interim.

Multiple Projects Given Green Light

¶16. The United States delegation came to CDIP 4 with the hope that substance - the discussion of concrete projects to implement the agreed recommendations -- would prevail over an inordinate preoccupation with procedure, something that has sometimes happened in past committee meetings. For the most part, this hope was realized. During the week, the committee approved five thematic projects:

- IP and Competition Policy (CDIP/4/4)
- IP, ICTs, the Digital Divide, and Access to Knowledge (CDIP4/5)
- IP and the Public Domain (CDIP4/3) (patent and copyright components)
- Developing Tools for Access to Patent Information (CDIP/4/6)
- Enhancing WIPO's Results Based Management (RBM) Framework to

Support the Monitoring and Evaluation of Development Activities (CDIP/4/8) (slightly modified)

¶17. The Committee also agreed that a proposal by Japan to develop a database of case studies showing the successful creation and use of IP in business, with a focus on developing countries, would be implemented as part of WIPO's ongoing activities. Two Korean proposals -- one on branding, the other on the use of patent information in the transfer of technology - will be discussed at CDIP 5 after the Secretariat prepares formal project documents for those proposals.

¶18. The Committee also reviewed projects currently being implemented. Although there were calls from many countries (e.g., France, Brazil) to undertake this review, when the discussion finally took place on Thursday afternoon, it lasted less than an hour.

¶19. The project on IP and the Public Domain generated a lively debate. As originally proposed by the Secretariat, the proposal involved studies and activities in four areas: (i) copyrights; (ii) trademarks; (iii) patents, and (iv) traditional knowledge (TK) and traditional cultural expressions (TCEs). By week's end, the TK/TCE component had been removed from the project document after protests from Indonesia, Zimbabwe, Egypt, and South Africa, among others, who refused to equate TK/TCE and the public domain. The trademark study will be discussed at the next session because of USG concerns over the terms of the study. The copyright project will go forward, but will now include modifications suggested by Brazil and Bolivia to the scoping study on copyright and related rights (Section 1.3 of CDIP/4/3). As revised, the study will survey tools that "affect" [the original word was "facilitate"] access, use and identification of the public domain "particularly in the digital environment" [the original proposal did not include an express reference to the digital environment]. The patent study will go forward, but without a last-minute revision suggested by Bolivia / India to expand the study to include "the implication of patent thickening, evergreening patents, the extension of patent term, pre-grant or post-grant opposition to patents, and the disclosure requirements." The United States objected that discussion of those topics would be duplicative of work taking place in the Standing Committee on Patents. Nonetheless, the U.S. delegation agreed to discuss the possible addition of these elements to the patent study at CDIP 5.

Technology Transfer Project Held Over

¶10. The United States came to CDIP 4 prepared to give its approval to the Secretariat's proposed Project on Intellectual Property and Technology Transfer: "Common Challenges - Building Solutions" (CDIP4/7). A group of "like-minded" countries (Brazil, Egypt, India, South Africa, Bolivia, Burundi, Sri Lanka, Yemen, among others), however, raised questions about the project, questioning the meaning of some of the terms, a lack of specificity, and an absence of action-oriented elements in the project. After lengthy discussions, it was agreed that the "like-minded" countries would have until the end of 2009 to submit comments on the project to the Secretariat. Other member states will then be invited to respond to that document by January 31, 2010. The Secretariat will then prepare a non-paper summarizing all members' suggestions (available by the end of February) for discussion at the fifth session of CDIP in April.

New Chair to Be Elected at CDIP 5

¶11. The previous chairman of the committee, Ambassador Trevor C. Clarke (Barbados), resigned his position earlier this year to enable him to accept an appointment as Assistant Director General for Copyright and Related Rights at WIPO, a position he recently assumed. The Fourth Session of CDIP was chaired by the committee's senior vice-chair, Mr. Mohamed Abderraouf Bdioui (Tunisia), but the Committee will need to elect a permanent new chairman at the next session. The United States remains cautiously optimistic that member states will be able to identify and elect a suitable chairman for this increasingly important Committee.

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